



APPENDIX

Section 1 of Article IV, Constitution of the United States, provides:

"Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

Articles 924, 925 and 929 of the Act of May 27, 1908 (Sec. 1, 35 Stat. 312), provide:

"Art. 924. STATUS OF ALLOTTED LANDS IN REGARD TO ALIENATION.—

That from and after sixty days from the date of this act the status of the lands allotted heretofore or hereafter to allottees of the Five Civilized Tribes shall, as regards restrictions on alienation or incumbrance, be as follows: All lands, including homesteads, of said allottees enrolled as intermarried whites, as freedmen, and as mixed-blood Indians having less than half Indian blood including minors, shall be free from all restrictions. All lands, except homesteads, of said allottees enrolled as mixed-blood Indians having half or more than half and less than three-quarters Indian blood shall be free from all restrictions. All homesteads of said allottees enrolled as mixed-blood Indians having half or more than half

Indian blood, including minors of such degrees of blood, and all allotted lands of enrolled full-bloods, and enrolled mixed-bloods or three-quarters or more Indian blood, including minors of such degrees of blood, shall not be subject to alienation, contract to sell, power of attorney, or any other incumbrance prior to April twenty-sixth, nineteen hundred and thirty-one, except that the Secretary of the Interior may remove such restrictions, wholly or in part, under such rules and regulations concerning terms of sale and disposal of the proceeds from the benefit of the respective Indians as he may prescribe. The Secretary of the Interior shall not be prohibited by this act from continuing to remove restrictions as heretofore, and nothing herein shall be construed to impose restrictions removed from lands by or under any law prior to the passage of this act. No restrictions or alienation shall be construed to prevent the exercise of the right of eminent domain in condemning rights of way for public purposes over allotted lands, and for such purposes sections thirteen to twenty-three inclusive, of an act entitled "An Act to grant the right of way through Oklahoma Territory to the Enid and Anadarko Railway Company, and for other purposes," approved February twenty-eighth, nineteen hundred and two (Thirty-second Statutes at Large, page forty-three), are hereby continued in force in the State of Oklahoma.

"Art. 925. LEASES OF RESTRICTED LAND.
—(Sec. 2). That all lands other than homesteads allotted to members of the Five Civilized Tribes from which restrictions have not been removed may be leased by the allottee if an adult, or by guardian or curator under order of the proper probate court if a minor or incompetent for a period not to exceed five years, without the privilege of renewal: **PROVIDED**, that leases of restricted lands for oil, gas or other mining purposes, leases of restricted homesteads for more than one year, and leases of restricted lands for periods of more than five years, may be made, with the approval of the Secretary of the Interior, under rules and regulations provided by the Secretary of the Interior, and not otherwise, **AND PROVIDED FURTHER**, That the jurisdiction of the probate courts of the State of Oklahoma over lands of minors and incompetents shall be subject to the foregoing provisions, and the term minor or minors, as used in this act, shall include all males under the age of twenty-one years and all females under the age of eighteen years.

* * * *

Art 929. EFFECT OF ATTEMPTED ALIENATION OF RESTRICTED LAND.—(Sec. 5. That any attempted alienation or incumbrance by deed, mortgage, contract to sell, power of attorney, or other instrument or method of incumbering real estate,

made before or after approval of this act, which affects the title of the land allotted to allottees of the Five Civilized Tribes prior to removal or restrictions therefrom, and also any lease of such restricted land made in violation of law before or after the approval of this act shall be absolutely null and void."

The portions of the Act of April 12, 1926, Sec. 1, 44 Stat. 239, applicable here provide:

"An Act to amend section 9 of the Act of May 27, 1908, (Thirty-fifth Statutes at Large, page 312), and for putting in force, in reference to suits involving Indian titles, the statutes of limitations of the State of Oklahoma, and providing for the United States to join in certain actions, and for making judgments binding on all parties, and for other purposes.

"BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That section 9 of the Act of May 27, 1908 (Thirty-fifth Statutes at Large, page 312), entitled "An Act for the removal of restrictions on part of the lands of allottees of the Five Civilized Tribes, and for other purposes, be, and the same is hereby, amended to read as follows:

"Sec. 9. The death of an allottee of the Five Civilized Tribes shall operate to remove all restrictions upon the alienation of said allottee's land: PRO-

VIDED, THAT hereafter no conveyance by any full-blood Indian of the Five Civilized Tribes of any interest in lands restricted by section 1 of this Act acquired by inheritance or devise from an allottee of such lands shall be valid unless approved by the county court having jurisdiction of the settlement of the estate of the deceased allottee or testator: * * *

Sec. 2. The statutes of limitations of the State of Oklahoma are hereby made and declared to be applicable to and shall have full force and effect against all restricted Indians of the Five Civilized Tribes, and against the heirs or grantees of any such Indian, and against all rights and causes of action heretofore accrued or hereafter accruing to any such Indians or their heirs or grantees, to the same extent and effect and in the same manner as in the case of any other citizen of the State of Oklahoma, and may be pleaded in bar of any action brought by or on behalf of any such Indian, his or her heirs or grantees, either in his own behalf or by the Government of the United States, or by any other party for his or her benefit, to the same extent as though such action were brought by or on behalf of any other citizen of said State: PROVIDED, That no cause of action which heretofore shall have accrued to any such Indian, shall be barred prior to the expiration of a period of two years from and after the approval of this Act, even though the full statutory

period of limitation shall already have run or shall expire during said two years' period, and any such restricted Indian, if competent to sue, or his guardian, or the United States in his behalf, may sue upon any such cause of action during such two years' period free from bar of the statutes of limitations.

"Sec. 3. Any one or more of the parties to a suit in the United States courts in the State of Oklahoma or in the State courts of Oklahoma to which a restricted member of the Five Civilized Tribes in Oklahoma, or the restricted heirs or grantees of such Indian are parties as plaintiff, defendant, or intervenor, and claiming or entitled to claim title to or an interest in lands allotted to a citizen of the Five Civilized Tribes, or the proceeds, issues, rents and profits derived from the same, may serve written notice of the pendency of such suit upon the Superintendent for the Five Civilized Tribes, and the United States may appear in said cause within twenty days thereafter, or within such extended time as the trial court in its discretion may permit, and after such appearance or the expiration of said twenty days or any extension thereof the proceedings and judgment in said cause shall bind the United States and the parties thereto to the same extent as though no Indian land or question were involved. * * *."

The portions of the Act of May 10, 1928, Sec. 2, 45 State. 495, applicable here provide:

"An Act to extend the period of restriction in lands of certain members of the Five Civilized Tribes, and for other purposes.

"BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, that the restriction against the alienation, lease, mortgage, or other encumbrance of the lands allotted to members of the Five Civilized Tribes in Oklahoma, enrolled as of one-half or more Indian blood be, and they are hereby, extended for an additional period of twenty-five years commencing on April 26, 1931: PROVIDED, That the Secretary of the Interior shall have the authority to remove the restrictions upon the applications of the Indian owners of the land, and may remove such restriction wholly or in part, under such rules and regulations concerning terms of sale, and disposal of the proceeds for the benefit of the respective Indians as he may prescribe.

"Sec. 2. That the provisions of section 9 of the Act of May 27, 1908 (Thirty-fifth Statutes at Large, Page 312), entitled "An Act for the removal of restrictions from part of the lands of allottees of the Five Civilized Tribes, and for other purposes," as amended by section 1 of the Act of April 12, 1926

(Forty-fourth Statutes at Large, Page 239), entitled "An Act to amend section 9 of the Act of May 27, 1908 (Thirty-fifth Statutes at Large, page 312), and for putting in force, in reference to suits involving Indian Titles, the statutes of limitations of the State of Oklahoma, and providing for the United States to join in certain actions, and for making judgments binding on all parties, and for other purposes," be, and are hereby, extended and continued in force for a period of twenty-five years from and including April 26, 1931, * * *

"Sec. 3. That all minerals, including oil and gas, produced on or after April 26, 1931, from restricted allotted lands of members of the Five Civilized Tribes in Oklahoma, or from inherited restricted lands of full-blood Indian heirs or devisees of such lands, shall be subject to all State and Federal taxes of every kind and character the same as those produced from lands owned by other citizens of the State of Oklahoma; and the Secretary of the Interior is hereby authorized and directed to cause to be paid, from the individual Indian funds held under his supervision and control and belonging to the Indian owners of the lands, the tax or taxes so assessed against the royalty interest of the respective Indian owners in such oil, gas and other mineral production."

The Act of March 2, 1931, 46 Stat. 1471, as amended by Act of June 30, 1932, 474 Stat. 474; 25 U. S. C. A. 409a, provides:

"409a. Sale of restricted lands; reinvestment in other restricted lands. Whenever any nontaxable land of a restricted Indian of the Five Civilized Tribes or of any other Indian tribe is sold to any State, county, or municipality for public-improvement purposes, or is acquired, under existing law, by any State, county, or municipality by condemnation or other proceedings for such public purposes, or is sold under existing law to any other person or corporation for other purposes, the money received for said land may, in the discretion and with the approval of the Secretary of the Interior, be reinvested in other lands selected by said Indian, and such land so selected and purchased shall be restricted as to alienation, lease, or encumbrance, and nontaxable in the same quantity and upon the same terms and conditions as the nontaxable lands from which the reinvested funds were derived, and such restrictions shall appear in the conveyance. (Mar. 2, 1931, c. 374, 46 Stat. 1471, as amended June 30, 1932, c. 333, 47 Stat. 474.)"

Sections 1, 2, 3, 4, 5 and 6 of the Act of January 27, 1933, Sec. 8, 47 Stat. 777, provide:

"Be it enacted by the Senate and House of Representatives of the United States of America in Con-

gress assembled, That all funds and other securities now held by or which may hereafter come under the supervision of the Secretary of the Interior, belonging to and only so long as belonging to Indians of the Five Civilized Tribes in Oklahoma of one-half or more Indian blood, enrolled or unenrolled, are hereby declared to be restricted and shall remain subject to the jurisdiction of said Secretary until April 26, 1956, subject to expenditure in the meantime for the use and benefit of the individual Indians to whom such funds and securities belong, under such rules and regulations as said Secretary may prescribe: Provided, that where the entire interest in any tract of restricted and tax-exempt land belonging to members of the Five Civilized Tribes is acquired by inheritance, devise, gift, or purchase, with restricted funds, by or for restricted Indians, such lands shall remain restricted and tax-exempt during the life of and as long as held by such restricted Indians, but not longer than April 26, 1956, unless the restrictions are removed in the meantime in the manner provided by law; * * *

"Sec. 2. The Secretary of the Interior be, and he is hereby, authorized to permit, in his discretion and subject to his approval, any Indian of the Five Civilized Tribes, over the age of twenty-one years, having restricted funds or other property subject to the supervision of the Secretary of the Interior,

to create and establish, out of the restricted funds or other property, trusts for the benefits of such Indian, his heirs, or other beneficiaries designated by him, such trusts to be created by contracts or agreements by and between the Indian and incorporated trust companies or such banks as may be authorized by law to act as fiduciaries or trustees: *Provided*, that no trust company or bank shall be trustee in any trust created under this Act which has paid or promised to pay any person other than an officer or employee on the regular pay roll thereof any charge, fee, commission, or remuneration for any service or influence in securing or attempting to secure for it the trusteeship in any trust; *Provided further*, that all trust agreements or contracts made or entered into prior to the date of approval of this Act, and all contracts or agreements made or entered into prior to said date providing for or looking to the creation of such trust or trusts shall be null and void unless such contracts or agreements shall have heretofore been approved by the Secretary of the Interior.

"Sec. 3. The Secretary of the Interior be, and he is hereby, authorized, upon the execution and approval of any trust agreement or contract as herein provided, to transfer, or cause to be transferred, to the trustee, from the individual restricted or trust funds or other restricted property of the respective

Indian, the funds or property required by the terms of the approved agreement, and the funds or property so transferred shall in each case be held by the trustee subject to the terms and conditions of the trust agreement or contract creating the trust, separate and apart from all assets, investment or trust estates in the hands of said trustee.

"Sec. 4. None of the restrictions upon the funds or property transferred under the terms of any such trust agreement or contract shall be in any manner released during the continuance of the restriction period now or hereafter provided by law, except as provided by the terms of such agreement or contract, and neither the corpus of said trust nor the income derived therefrom shall, during the restriction period provided by law, be subject to alienation, or encumbrance, nor to the satisfaction of any debt or other liability of any beneficiary of such trust during the said restriction period. The trustee shall render an annual accounting to the Secretary of the Interior and to the beneficiary or beneficiaries to whom the income for the preceding year, or any part thereof, was due and payable.

"Sec. 5. Trust agreements or contracts executed and approved as herein provided shall be irrevocable except with the consent and approval of the Secretary of the Interior; *Provided*, That if any trust, trust agreement, or contract be annulled, canceled, or

set aside by order of any court, or otherwise, the principal or corpus of the trust estate, with all accrued and unpaid interest, shall be returned to the Secretary of the Interior as restricted individual Indian property.

"Sec. 6. If, after the creation and approval of any trust, it is found that said trust was procured in violation of any of the provisions of this Act, or that the trustee designated therein has failed or refused to properly perform the duties imposed thereby, in accordance with the terms, provisions and requirement of said trust agreement, it shall be the duty of the Attorney General to institute appropriate proceedings in the Federal courts for the cancellation and annulment of said trust by court decree, and upon decree of annulment and cancellation, which shall be at the cost of the trustee, and after accounting, but without the allowance of any fee, charge, or commission for any services rendered by the trustee, all funds held by the trustee shall be paid to the Secretary of the Interior as restricted funds, and the Federal courts are hereby given exclusive jurisdiction of all actions involving an accounting under any trust created under the provisions of this Act, and all actions to cancel, annul, or set aside any trust entered into pursuant to this Act."

The Act of May 19, 1937, Stat. 188; 25 U. S. C. A. 412a, provides:

"412a. Exemption from taxation of lands subject to restrictions against alienation; determination of homestead.

"All homesteads, heretofore purchased out of the trust or restricted funds of individual Indians, are hereby declared to be instrumentalities of the Federal Government and shall be nontaxable until otherwise directed by Congress: *Provided*, That the title to such homesteads shall be held subject to restrictions against alienation or encumbrance except with the approval of the Secretary of the Interior; *And provided further*, That the Indian owner or owners shall select, with the approval of the Secretary of the Interior, either the agricultural or grazing lands, not exceeding a total of one hundred and sixty acres, or the village, town or city property, not exceeding in cost \$5,000, to be designated as a homestead. (June 20, 1936, c. 622, par. 2, 49 Stat. 1542; May 19, 1937, c. 227, 50 Stat. 188.)"

Rule 17, of the Federal Rules of Civil Procedure provides:

"Rule 17. Parties Plaintiff and Defendant; Capacity.

(a) REAL PARTY IN INTEREST. Every action shall be prosecuted in the name of the real party

in interest; but an executor, administrator, guardian, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought; and when a statute of the United States so provides, an action for the use or benefit of another shall be brought in the name of the United States.

(b) **CAPACITY TO SUE OR BE SUED.** The capacity of an individual, other than one acting in a representative capacity, to sue or be sued shall be determined by the law of his domicile. The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized. In all other cases capacity to sue or be sued shall be determined by the law of the state in which the district court is held; except that a partnership or other unincorporated association, which has no such capacity by the law of such state, may sue or be sued in the common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States.

(c) **INFANTS OR INCOMPETENT PERSONS.** When ever an infant or incompetent person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant

or incompetent person. If an infant or incompetent person does not have a duly appointed representative he may sue by his next friend or by a guardian *ad litem*. The court shall appoint a guardian *ad litem* for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person."

Articles 4285-4289, Revised Civil Statutes of Texas, provide:

"Art. 4285. *Letters of guardianship*.—Where a guardian and his ward are non-residents, such guardian may file in the county court of any county a full and complete transcript from the records of a court of competent jurisdiction where he and his ward reside, showing that he has been appointed and has qualified as guardian of the estate of such ward; which said transcript shall be certified by the clerk of the court in which the proceedings were had, under the seal of such court, if there be one, together with a certificate from the judge, chief justice or presiding magistrate of such court, as the case may be, that the attestation of such transcript is in due form; and upon the filing of such transcript the same may be recorded, and the guardian shall be entitled to receive letters of guardianship of the estate of such minor situated in this State, upon filing a bond with sureties as provided in Article 4141. (Acts 1876, p.

180; G. L. Vol. 8, p. 1011; Acts 1st C. S. 1923, p 13.)

"Art. 4286. *May remove property.*—Upon recovery of the property of the ward, if it be personal property, such guardian may remove the same out of the State, unless such removal would conflict with the tenure of such property, or the terms and limitations under which it is held; and if it be real property, he may obtain an order for the sale of it and remove the proceeds. Such sale shall be made, returned and acted upon by the court as other sales of real estate by a guardian made in accordance with this title."

Article 7425A, Revised Civil Statutes of Texas, provides:

"SECTION 1. Where a trust is created, but is not contained or declared in the conveyance to the trustee, or when a conveyance or transfer is made to a trustee without disclosing the names of the beneficiary, or beneficiaries, the trustee shall be held to have the power to convey or transfer or encumber the title and whenever he shall execute and deliver a conveyance or transfer or encumbrance of such property, as trustee, such conveyance or transfer or encumbrance shall not thereafter be questioned by any one claiming as a beneficiary under such trust or by anyone claiming by, through, or under an undisclosed beneficiary, provided that none of the trust

property in the hands of said trustees shall be liable for personal obligations of said trustee."

Section 16, Title 15, Oklahoma Statutes, provides:

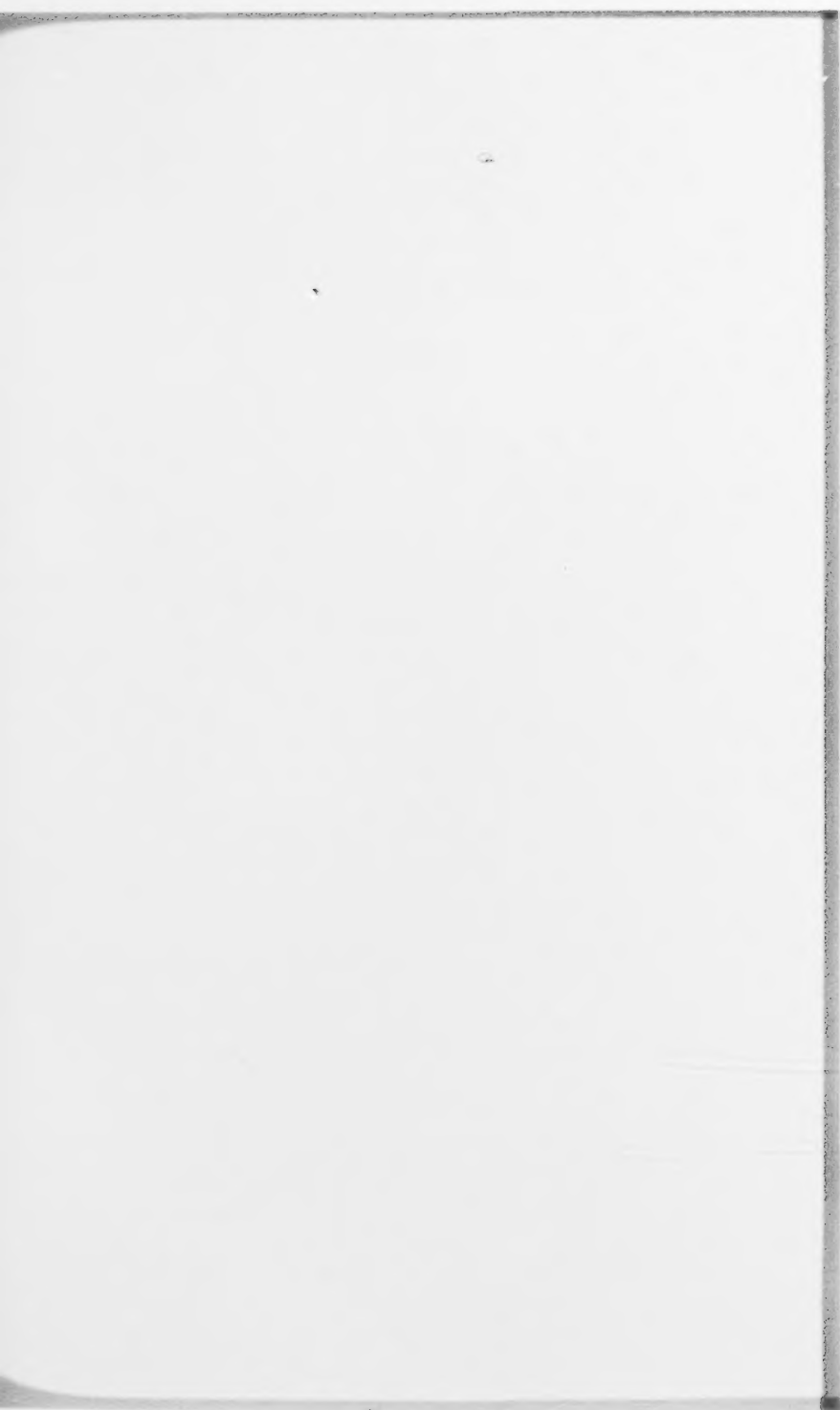
"Persons of unsound mind within the meaning of this chapter (Contracts) are idiots, lunatics, and imbeciles."

Section 8, Title 30, Oklahoma Statutes (Guardian and Ward), provides:

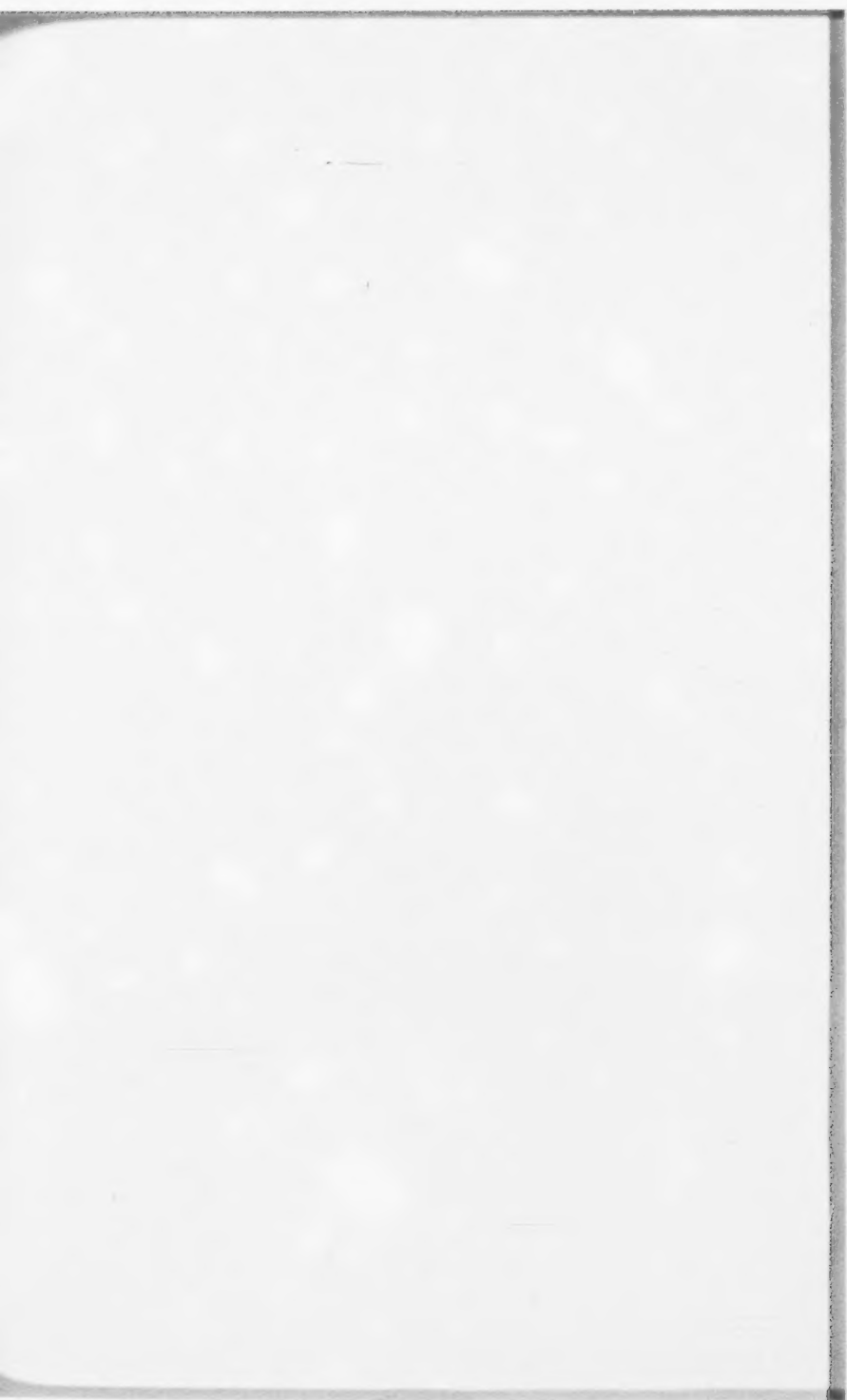
"A guardian of the person or property, or both, of a person residing in this State, who is a minor, or of unsound mind, may be appointed in all cases, other than those named in Section 3326, by the county court, as provided in Chapter 64. (R. L. 1910, par. 3328)"

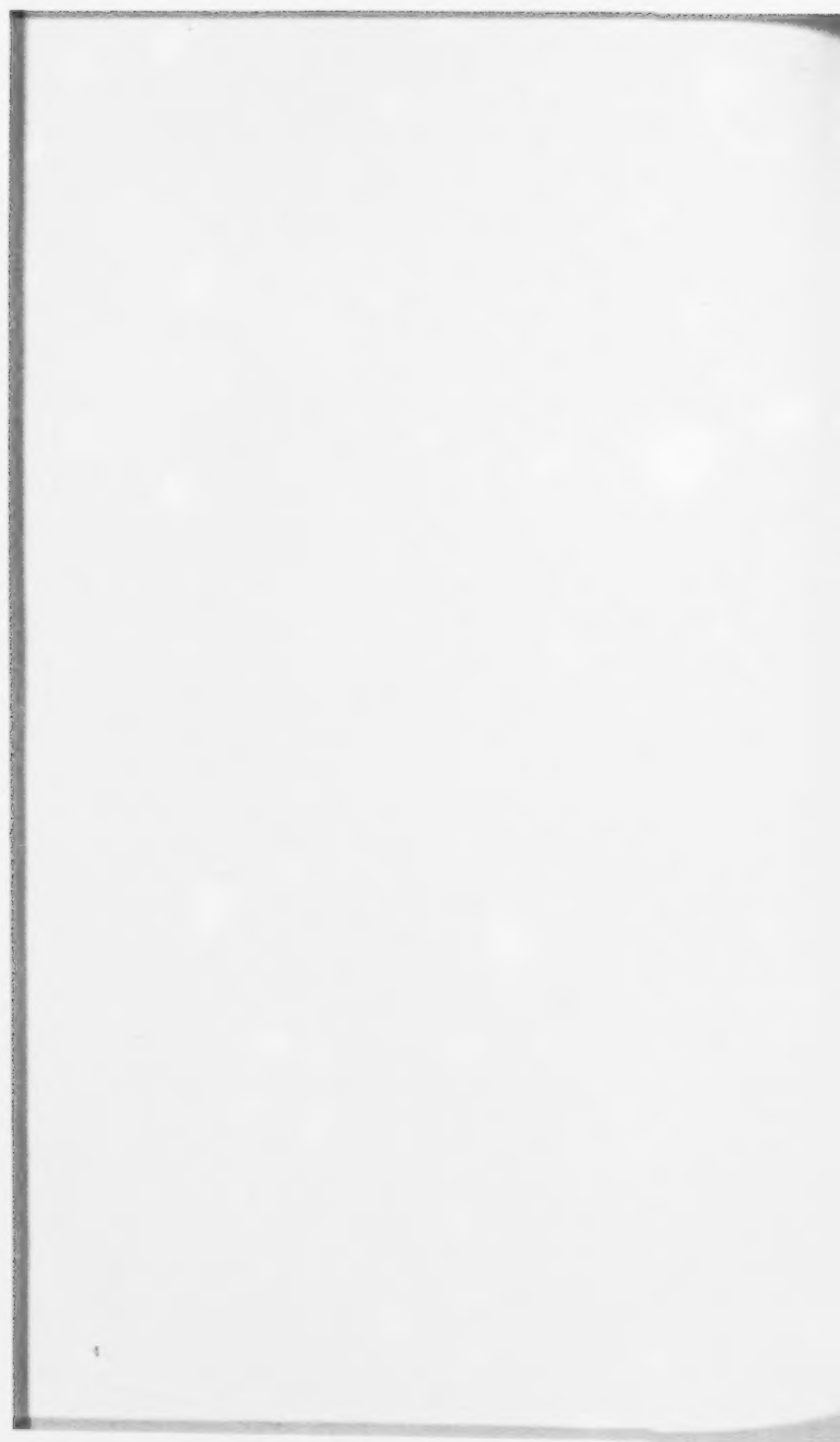
Section 852, Title 58, Oklahoma Statutes (Probate Procedure), provides:

"If after a full hearing and examination upon such petition, it appears to the judge of the county court that the person in question is incapable of taking care of himself and managing his property, he must appoint a guardian of his person and estate, with the powers and duties in this article specified. (R. L. 1910, par. 6539)"









(24)
No. 539

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OCT 2 1944

CHARLES ELMORE CROPLEY
CLERK

IN THE
United States Circuit Court of Appeals
FIFTH CIRCUIT

Case No. 10775

Amey Thlocco, et al.,

VS.

Magnolia Petroleum Company.

INDEX TO PRINTED RECORD PREPARED BY
APPELLANT

E. Duncan & Co. CLERK OF COURT FOR APPEALS

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